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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

BULGARIA*

[19 June 1998]

* The initial report submitted by the Government of Bulgaria is contained in document CAT/C/5/Add.28; for its consideration by the Committee, see documents CAT/C/SR.97, 98 and 99 and Official Records of the General Assembly, Forty-seventh Session, Supplement No. 44 (A/47/44), paras. 219-243.

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Introduction

1. The initial report of the Republic of Bulgaria was considered by the Committee against Torture on 18 and 19 November 1991. Having assessed positively the report and the complementary oral explanations by the Bulgarian representative, the Committee made some remarks and suggestions which were taken into account in the preparation of the second periodic report.

2. At the outset, it should be noted that, in the years since 1992, new favourable legislative and operative conditions, in terms both of international and domestic law, have been created with regard to the application of the Convention against Torture. Thus, the Republic of Bulgaria withdrew in June 1992 its reservations as to article 30 (1) of the Convention. In May 1993 it further withdrew its reservations as to articles 21 and 22 concerning recognition of the relevant terms of reference of the Committee. Of particular importance to that end was the ratification in September 1994 and the incorporation in the Bulgarian legislation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

3. In accordance with article 7 of the European Convention, the Republic of Bulgaria was visited, from 26 March to 7 April 1995, by a delegation of the European Committee for the Prevention of Torture (CPT). The delegation reviewed units of the National Police and of the National Investigative Service, detention facilities and mental institutions. Consultations were held with State agencies and non-governmental organizations (NGOs). In a detailed report of 15 September 1995, the CPT described instances of torture established by the delegation during the visit. These cases related mainly to ill-treatment by the police of persons suspected of criminal activities and on rare occasions, by the prison administration with regard to physical and mental torture of detainees. The report suggests various general and specific measures aimed at preventing torture in detention facilities The Bulgarian Government presented two official replies to the CPT report. The first one dealt with the initial actions and the other one with the additional measures to address the CPT recommendations, comments and requests for information. The CPT stressed the constructive cooperation with the Bulgarian authorities. The latter addressed with due attention and concern the findings, conclusions and recommendations made by the delegation. The follow-up, in the form of prompt and efficient measures, proves the resolute determination of the authorities to prevent all forms of degrading and inhuman treatment of citizens by officials.

I. INFORMATION ON TEXTS IN THE FIRST PART OF THE CONVENTION AGAINST TORTURE, ACCORDING TO THE QUESTIONS, REMARKS AND REQUESTS OF THE COMMITTEE

Article 2

4. In the Republic of Bulgaria, since 1992, a number of new normative acts have been adopted while the existing ones have been amended and supplemented. Thus, greater legal guarantees were provided for protection of the rights of citizens and, in particular, for attainment of the objectives of the Convention. *It is worth mentioning the Judiciary* Act of 1994, the Ministry

of the Interior Act of 1997 and Ordinance No. 12 (1993) of the Minister of Justice on the Situation of Persons Held in Detention Facilities. It should be emphasized that amendments made to the penal legislation in force are in line with the recommendations of the Committee.

5. Life imprisonment was introduced in the Penal Code whose enforcement is regulated by the Punishment Enforcement Act. The idea is that this punishment supersedes the death penalty, which is to be eliminated. The presence of both at the moment is justified as a legal and political prerequisite for overcoming, more flexibly and smoothly, the prevailing public attitude against abolition of capital punishment. As a result of the moratorium imposed on executions in 1990, no death sentence has been enforced for the last seven years. Capital punishment is not envisaged as a part of the penal system in either of the existing drafts of a new Penal Code. In this sense, the question is not whether capital punishment is to be abolished in Bulgaria, but when.

6. As for the regime of those sentenced to death and life imprisonment, there are regulations for protective penitentiary treatment under conditions of strict isolation. More favourable living and working conditions are envisaged for them, in particular: unrestricted correspondence; opportunity to receive two food parcels and 30 packs of cigarettes per month; monthly visits by relatives; money transfers for meeting personal needs; daily one-hour stays in the open air; opportunity to receive newspapers, books and magazines in Bulgarian and foreign languages; opportunity to meet media representatives, etc.

7. The crime of extortion (known also by the popular name of "racketeering") includes threats and coercion and infliction of property damages on the victim. This crime presupposes higher liability in cases when the coercive act is committed by an official or in connection with the discharge of his/her official duties.

8. The initial report did not make mention of the existence of a crime under the Penal Code (art. 127 (3)) which relates to the Convention. It concerns leading a person to committing suicide through cruel treatment or systematic abasement of his dignity. An objective prerequisite for liability is the circumstance that the victim finds himself/herself in material or other dependence upon the perpetrator (at work, within the family, by virtue of a contract, etc.). The perpetrator (including an official) committing continuous physical and or mental harassment on the dependent person should be aware and presume that the latter might kill himself/herself. The liability appears at the moment when the person concerned commits suicide or attempts to do so. The punishment is deprivation of liberty from two to eight years. The application of the penalty is relatively limited due to the specifics of the circumstances and difficulty proving premeditation.

9. In 1992/93 a proposal was put forward by members of Parliament in the then Legislative Commission of the National Assembly to criminalize acts of "torture", as formulated in article 1, paragraph 1, of the Convention. That proposal was not introduced formally at a plenary session. The presumption probably was that the absence of such a crime was not a substantial lacuna in the Bulgarian criminal law as there are texts providing for the punishment of

torture in the sense of the Convention (arts. 36 (2), 92 (5), 116 (1) and (6), 127 (3), 131 (1) and (5), 142 (2) and (3), 187, 285, 287, 410-412, 416-418). There is a tendency to extend the number and scope of the norms regarding torture and other forms of cruel, inhuman or degrading treatment. Nevertheless, in order to attain a comprehensive and complete legal regulation of these specific offences, and in keeping with the commitment ensuing from the Convention, the efforts to formulate the crime of "torture" will continue so that it can be included in the Penal Code in the near future.

10. Apart from penal laws, the Bulgarian legislation, as a whole, provides for a large variety of measures to prevent torture. The main activities of the police and the security, investigation, prosecution and other law enforcement bodies, as well as mental institutions, are regulated by laws. Those are further specified by various (in terms of character, aims and significance) by-laws. In the meantime, the legislation is constantly being improved in the process of reform aimed at strengthening democracy and civil society, in accordance with article 2 (1) of the Convention. In this sense, articles 118 and 119 of the Judiciary Act are particularly eloquent. Article 118 regulates the powers of the Prosecutor's Office arising from the Constitution of the Republic of Bulgaria. Article 119 stipulates the kinds of actions and measures to be taken by the Prosecutor in discharge of his functions. It contains a detailed description of the Prosecutor's supervision over the legality of all activities at detention facilities.

11. As for the Bulgarian court, practice shows that it has become more sensitive, precise and thorough in its approach to persons who have committed torture-related crimes.

12. On the other hand, the Constitutional Court, since its establishment, has never been seized and has not pronounced itself on any matters bearing upon the Convention.

13. The adequacy of the applied legislative and administrative measures was assessed in the report of 15 September 1995, mentioned in the Introduction above, made by a delegation of the European Committee for the Prevention of Torture. That report was prepared on the basis of thorough inspection of the police and investigation structures, as well as of detention facilities and mental institutions. As a result of the actions of the relevant Bulgarian authorities in implementation of the Committee's recommendations, prevention of torture in practice is becoming much more efficient. All individuals should be unconditionally protected from torture and other forms of cruel, inhuman or degrading treatment or punishment. For obvious reasons, children and young people are most in need of such protection. In this context, on the basis of the modified national legislation and in view of the Convention on the Rights of the Child, to which Bulgaria is a party, substantial amendments and supplements were adopted at the end of 1996 to the Combating Antisocial Behaviour by Minors and Adolescents Act.

14. That Act introduced some changes in the conditions, periods and procedures of placing minors and adolescents in special homes, boarding schools and facilities for homeless children. Worth mentioning are the new provisions concerning placement in a Corrective Boarding School. The decision on placement for a period of up to three years can be made by a court or a

prosecutor under article 61 and article 64 of the Penal Code, as well as by a local Commission on Combating Antisocial Behaviour by Minors and Adolescents. In the latter case special proceedings are instituted with the mandatory participation of a parent, a teacher and a public defender. Any placement decided on by the local commission is subject to court supervision as children are actually separated from their parents and families against their will.

15. Parallel to that, new regulations on the work of the Corrective Boarding Schools and of the Pedagogical Boarding Schools (corrective educational institutions of an open type) are to enter into force after their approval. They contain special texts concerning the prohibition of means and methods degrading human dignity. They are in accordance with the spirit of the Convention and ensue from the Education Act (1991) and the Regulations for its implementation (1992) which stipulate that teachers have no right to degrade their pupils' dignity or to apply any form of physical or mental coercion on them. And finally, it should be noted that the development of society brings up a number of new problems, along with the pending ones, bearing upon the raising and bringing up of children and their social protection. In this context, the elaboration of new legislation is under consideration (Law on Protection of the Child, Law on Courts for Minors and Adolescents, etc.) in which, along with the comprehensive regulation of a great number of cases, an accent will be put on mechanisms and guarantees for preventing torture, in accordance with the Convention).

16. Special attention will be accorded to children who have nobody to look after them and who are reared in various institutions, in order to protect them from any form of violence and inhuman treatment in the sense of the Convention. This is also provided for under article 47 (4) of the Constitution of the Republic of Bulgaria.

17. It should be noted that, in the period under review, there have been no attempts by any State institution to justify torture based on extraordinary circumstances - internal instability or any other emergency (art. 2 (2) of the Convention).

18. In the past years there have not been any cases of justifying torture on the grounds of an order of a superior official or State body (art. 2 (3) of the Convention).

Article 3

19. The Bulgarian penal legislation does not contain any explicit prohibition on expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture under article 3 (1) of the Convention. The existing situation has to do with the problem of the relationship between domestic and international law as provided in article 5 (4) of the Constitution. International instruments ratified according to the constitutional procedure, promulgated and effective in the Republic of Bulgaria are a part of the domestic law of the country. They supersede any domestic legislation stipulating otherwise. By virtue of this provision, the

Bulgarian legislation does not require that article 3 of the Convention be reproduced in a law as it has an immediate direct effect and can be applied by the courts. Even if there were domestic provisions stipulating otherwise, article 3 would still be effective under article 4 (4) of the Constitution.

20. Moreover, in the period under review Bulgaria acceded to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The mechanisms for protection of persons from torture provided for in these two conventions are in force for Bulgaria.

21. In this context, it should be pointed out that in the period under review, no person was expelled, returned or extradited from the Republic of Bulgaria to a State where he would have been in danger of being subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment.

Article 4

22. Some of the newly adopted numerous and substantial amendments and supplements to the Penal Code and the Penal Procedure Code have a direct bearing on the issues treated in the Convention. Traditionally, the Bulgarian legislator has always tried to ensure that the Penal Code covers all encroachments on the person relating to torture or other forms of cruel, inhuman or degrading treatment or punishment and envisage an adequate grave liability of perpetrators.

23. Most offences connected with torture are committed by officials who, on the basis of their incompetence or emotional and psychological instability, break the laws, ignore their duties or misuse their powers. Therefore greater attention should be paid to the selection, training and supervision of the actions of those officials whose work might put them in a position to commit torture or to use other forms of cruel, inhuman and degrading treatment or punishment.

Article 5

24. The principles of the Bulgarian Penal Code (arts. 3-8) as well as the procedural provisions (arts. 186, 202, 203 and 222 of the Penal Procedure Code) bearing on the obligation of the Republic of Bulgaria to take the necessary measures and to establish its jurisdiction over torture-related offences were outlined in the first report. In the period under review, no changes were introduced in the legal provisions. However, in terms of procedure, a possibility of extending the period of preliminary investigation was introduced. If the preliminary investigation is not completed within two months, the District Prosecutor can extend the period to six months and, in exceptional cases, the Prosecutor General could extend it to up to nine months (art. 222 (3) of the Penal Procedure Code).

25. As the existing norms have proved their efficiency and durability, there have been no practical difficulties with regard to the implementation of articles 3-8 of the Penal Code (in accordance with art. 5 of the Convention).

Articles 6, 7, 8 and 9

26. With regard to implementing its obligations ensuing from articles 6, 7, 8 and 9 of the Convention, the Republic of Bulgaria is a party to the following multilateral conventions.

European Convention on Extradition (in effect for Bulgaria since 15 September 1994);

Convention on the Transfer of Sentenced Persons (in effect for Bulgaria since 15 September 1994);

European Convention on Mutual Assistance in Criminal Matters (in effect for Bulgaria since 15 September 1994);

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (in effect for Bulgaria since 1 September 1994).

27. Besides, at different times and mainly prior to its accession to the Convention, the Republic of Bulgaria concluded a number of bilateral agreements. Twenty-three of them deal exclusively with legal assistance or include criminal proceedings as well. Half of the States parties to these agreements have also signed and ratified the Convention. A transfer agreement was signed with Italy and an agreement on transfer of convicted persons with Turkey.

28. The bilateral agreements signed by Bulgaria on extradition and legal assistance in criminal proceedings do not contain special clauses on obligations to render legal assistance or to refuse to render legal assistance with regard to offences representing or containing forms of torture. Nevertheless, there are no provisions in the domestic law or in the bilateral and multilateral agreements which would be in contradiction with the above-cited texts of the Convention. Offences related to torture are grave and premeditated and that, in principle, implies extradition of the person concerned in the absence of provisions to rule it out.

Article 10

29. In connection with the implementation of obligations ensuing from the Convention, in the last few years the Bulgarian authorities have been paying serious attention to education and training of officials who, due to the nature of their functions, might be prone to violate human rights and, in particular, commit torture and other forms of cruel, inhuman or degrading treatment or punishment.

30. Questions relating to respect for human dignity and rights are a priority in the training of police officers. Qualified instructors, both from within and outside the police structures, have been engaged. Different beginners or advanced courses dealing with basic law disciplines (constitutional law, international law, criminal procedure, administrative law and procedure, criminology, etc.) treat different aspects of human rights protection. The subject "police psychology" puts the accent on the psychology

of communication in police work. It is aimed at acquiring qualifications and skills to address conflicts without resorting to physical force and aids. Of particular importance are the joint training projects with international foundations, associations, etc., as well as police authorities of other countries. The understanding now is that all police officers and sergeants should pass a psychological test and practical measures are being taken to that end.

31. In connection with the training of the staff of mental institutions, periodic courses for psychiatric nurses have been organized for the last few years at the National Centre for Complex Human Studies of the Ministry of Health with the assistance of the Neuro-Science and Behaviour Foundation. The West Lambeth Community Care National Health Service Trust of Great Britain expressed its interest in cooperation in that sphere and guidelines for joint activities were mapped out by its representatives and the Ministry of Health. In addition, a manual of psychiatric nursing, a translation of Susan Ritter's book Manual of Clinical Psychiatric Nursing was published with the financial support of the Geneva Initiative on Psychiatry, the International Foundation for Abolition and Prevention of Political Abuse of Psychiatry. The Manual was approved by the Ministry of Education as a training aid for psychiatric nurses and distributed in all psychiatric institutions.

32. The Bulgarian authorities believe that practical issues relating to detention are of special importance, such as the methods of interrogation of arrested, suspected or charged persons, the use of video and audio recording, registration of detained persons in daily record books, etc. A detailed Instruction on Application of the Penal Procedure Code has been worked out to that end. This Instruction is a joint action of the Prosecutor General's Office, the National Investigative Service and the National Police Directorate; it further regulates the rights and obligations of each institution, as well as the powers of all institutions in their concerted work in search of solutions to these issues.

33. The training of officers serving at prison establishments is effected by special courses for beginners and periodic retraining. Legal, psychological and pedagogical subjects dominate the study programmes of these courses. The skills of interpersonal communication and building up positive relations with persons who have been deprived of their liberty are the main goals of these programmes. This will not only diminish the risk of ill-treatment but will enhance control and security.

34. Other general and specific measures for ensuring dissemination of information on the work standards of enforcement authorities, medical staff and officers in arresting, interrogating and treating a detainee or a convicted person can also be mentioned:

(a) Translating into Bulgarian of a collection of international instruments on human rights containing the Convention and eight other acts on human rights in the administration of justice and the protection of persons subject to detention or imprisonment;

(b) Bringing laws and by-laws into line with the Convention;

(c) Daily instructions to the staff on duty;

(d) Informing the public, mainly through the media, by raising topics and specific cases with a view to fostering public intolerance of torture;

(e) Supplying prison and other special libraries with a sufficient number of copies of the European Convention for the Prevention of Torture, the explanatory report, the Additional Protocls to the Convention and expert comments. One of the obligations of social workers is to explain its provisions to persons deprived of liberty.

35. Bringing the provisions of the Convention to the knowledge of more people (popularizing the Convention in the broadest sense) is an additional way of preventing torture and other cruel, inhuman or degrading treatment or punishment.

36. Periodic reviews of the rules, instructions, methods and practices in interrogation, detention and treatment of suspected, accused and convicted persons are a standing activity of the Bulgarian authorities. Pursuant to the Ministry of the Interior Act, police authorities can, under certain conditions, detain a person for up to 24 hours, conduct a personal search, inspect personal belongings, premises and vehicles, use subsidiary physical force, auxiliary aids and, finally, arms, as the last resort. Any interrogation of an accused or suspected person, a witness or an expert is to be conducted in accordance with the procedure established by the Penal Procedure Code guaranteeing voluntary cooperation and authenticity of explanations and testimony. No evidence is accepted which has not been acquired or prepared in compliance with the provisions and procedures envisaged in the Penal Procedure Code.

37. In 1993 the Minister of Justice issued Ordinance No. 12 on the Situation of Persons Held in Detention Facilities. The provisions therein were introduced in line with the general tendency of democratization of legislation and full protection of human rights.

38. It should be noted that, for the time being, it is not planned to set up an independent body to monitor whether the conditions of detention, arrest or deprivation from liberty in general are in accordance with the provisions of the Convention. Neither is it planned to introduce a system of protection, including an independent inquiry on the basis of information about torture cases. These functions are successfully carried out by activists of national and international non-governmental human rights organizations. In general, their activities are multifaceted and intensive while their influence on institutions (including on the implementation of the Convention) is on the rise.

39. According to the internal regulations of the National Investigative Service's detention facilities, all detainees are entitled to medical care. Physicians or medical auxiliaries are employed by all district investigative services. They mandatorily examine each newly arrived detainee or any other detainee if a complaint has been made. The results of the first medical examination are put down in writing and kept in confidence. In addition, in

every case when that is necessary, the patient is taken for an examination or treatment by specialists in the respective district hospitals or in the specialized hospital of the Ministry of the Interior in Sofia.

40. In recent years, specific measures have been taken to improve health-care services in prison establishments on the basis of the Enforcement of Punishments Act, of the Regulations for its implementation and of other acts. All new prisoners are subjected to a psychological test and sanitary treatment, as well as to a thorough medical examination on the basis of which they are accommodated and allocated work. Health-care cards are made for all persons suffering from diagnosed diseases and subject to observation. Such cards are also compulsory for healthy prisoners who are to remain in prison for over one year. When a prisoner is moved to another establishment his card is sent with him. The prison directors and the medical personnel have been instructed to enhance the control and improve the organization with regard to ensuring confidentiality of medical data on prisoners. In order to improve the psychiatric care of prisoners, five prisons have employed their own psychiatrists while other prisons rely on psychiatrists of civil health-care institutions. A multifunctional hospital has been built at the central prison in Sofia. As for suicides in prison, there is no information pointing to cases of suicides having been caused by torture. Studies show that the average number of prison suicides is three to four annually. Reasons may be different and not always easy to identify. Suicides are most often caused by depression due to failed marriages or family problems, protests of defendants, personal mishaps, etc. There are also cases of prisoners who have committed suicide while on furlough.

41. The religious support, or the so-called "healing of the soul", has become very popular in prison establishments in the last few years. Priests went into prisons, special rooms were equipped for that purpose, chapels were built in prison yards and other necessary conditions were created for religious rituals and services.

42. As far as persons taken into custody by the police are concerned, there is no normative act expressly providing for a medical examination or doctor's access to the person in custody. In practice, whenever that is necessary, police officers call a doctor or a team from the closest hospital. The question of introducing a mandatory doctor's assessment in such cases has not yet been put to discussion. Introduction of regulations with regard to doctors' access to a person held in custody by the police is under consideration now. The medical examinations could also be done in private, analagous to the act of meeting a lawyer, while the results of the examination, the complaints of the detainee and the conclusions of the physician in writing could be made available to the detainee and his lawyer.

43. The above-mentioned measures, as well as the monitoring mechanisms at detention facilities, including inspections by the European Committee for the Prevention of Torture, represent a serious attempt to guarantee that torture will not take place and will eventually be eliminated. Still further legal guarantees to that end are provided by the drafts of a new Penal Code, a new Penal Procedure Code and a new Law on Enforcement of Punishments.

Article 12

44. Cases of torture in the sense of the Convention have taken place in the period 1992-1996. Nevertheless, article 287 of the Penal Code has not been implemented for two reasons: first, its scope is relatively limited with regard to the nature of the victim and the subjective aspect; second, an act under article 287 of the Penal Code often causes injury and departs from the norms of murder or bodily injury, and the fact of torture is accepted by the court as an aggravating circumstance in deciding on the punishment.

45. It should be emphasized that the number of officially registered offences is smaller than that of those really committed as there is latent crime. The offence is committed discreetly, the victim is often dependent on the official in question and is afraid to report the case. Therefore, the data indicated below are not exhaustive.

46. According to the information from the Administration of Detention Facilities, in 1994 and 1995, a total of 69 complaints of physical ill-treatment or moral harassment of prisoners by prison staff were lodged. A thorough investigation of the complaints established that only three of them were well grounded. As a result of the proceedings instituted, one supervisor was turned over to the Prosecutor's Office for penal proceedings and another three were subjected to disciplinary measures.

47. In the period 1 January 1992-30 August 1995, there were 134 cases of continued detention after the expiry of the sentence as follows: 1992 - 28 cases, 1993 - 31 cases, 1994 - 39 cases, and until 30 August 1995 - 36 cases. The reasons were mostly, as follows: late announcement of sentences; imposition of a punishment or correction of an imposed punishment by a second instance; delayed cumulation of sentences due to the prison administration. The period of imprisonment was exceeded by several days to two months.

48. The statistics show the following: in 1992 22 cases of overextended sentences were caused by the court, 4 by the Prosecutor's Office and 2 by the prison administration. In 1994 the respective figures were 20, 8 and 0.

49. In recent years there were various cases of physical and psychological ill-treatment of young soldiers by older soldiers and officers in the barracks. Most often disciplinary punishments were imposed but the most flagrant offences, which had led to bodily injury or death, were taken up by a court.

50. As for ill-treatment and cruelty, including torture, practised with regard to detainees at police stations, the official statistics indicate that in the period from the beginning of 1991 to May 1997 there were 46 offences committed by police officers of the police and the Ministry of the Interior. In most cases physical force was used illegally by sergeants and officers against suspects and, within the regular forces of the Ministry of the Interior, against recruits. Four persons died as a result of beatings. There was one homosexual assault and one murder.

51. In this context, 10 inquiries were held against 10 sergeants and 8 officers. Two sentences were passed and five officers were deprived of liberty. The other cases are still being processed. Disciplinary proceedings were instituted in all cases. Five army officers and six army sergeants were disciplined and dismissed, as were four officers and five sergeants from the regular forces of the Ministry of the Interior. The media widely publicized the death of Christo Christov who was cruelly beaten by officers from the 7th Regional Police Office, Sofia, which constituted a crime under article 116 (2) and (6) of the Penal Code. The court found three lieutenants of the National Police guilty of murdering, deliberately and cruelly, Mr. Christov and sentenced them to long terms of imprisonment: between 18 and 20 years. Three more police officers were sentenced to different terms of imprisonment for misuse of power.

52. These cases of torture were quickly and impartially investigated and finalized by court proceedings. In prtactice, nobody participating in torture was unjustifiably released from liability.

53. It cannot be denied that there are problems in Bulgaria regarding protection against torture. Various legislative, administrative, legal and organizational measures are undertaken to overcome them. An important contribution is made by the numerous Bulgarian and foreign non-governmental human rights organizations. Their inquiries, findings and recommendations are taken into consideration by the Bulgarian authorities in their efforts to improve the situation.

Article 11

54. Article 45 of the Constitution of the Republic of Bulgaria expressly stipulates the right of citizens to lodge complaints with the State authorities. This right and the guarantees for its exercise have been further developed in the laws and by-laws.

55. Whenever a person alleges that he or she has been subjected to torture representing a crime in the sense of the Convention, he or she can communicate that circumstance to investigative, Prosecutor's or police bodies. If the information provided in the application is sufficient according to article 186 of the Penal Procedure Code, preliminary proceedings are instituted against the indicated perpetrator and the penal procedure takes its course. Otherwise, when there are no sufficient data for institution of preliminary proceedings and no urgent investigative actions are necessary, the respective units of the Ministry of the Interior and other administrative bodies conduct a preliminary inspection within the shortest possible time and notify the Prosecutor's Office thereof (article 191 of the Penal Procedure Code).

56. Besides the national regulations concerning the right to complaints in general and with reference to article 13 of the Convention, there are special international legal possibilities for the persons alleging that they were subjected to torture or other forms of cruel and degrading treatment. Among them, the most important is the possibility under the European Convention on Human Rights, to which Bulgaria is a party. Pursuant to article 25 of this Convention, each person alleging that he or she is a victim of a human rights violation, including torture, inhuman or degrading treatment and punishment,

may address his complaints to the European Commission on Human Rights and expect the European Court of Human Rights to act on them. The right to individual complaints under article 25 of the European Convention is widely publicized in various publications and commentaries explaining, in detail, who may lodge a complaint, how and when, and what is the further procedure.

57. The Republic of Bulgaria has undertaken a commitment not to interfere with the exercise of that right. On the other hand, any person who has filed a complaint with the European Court is protected against intimidation in accordance with the general procedure.

Article 14

58. In accordance with article 14 of the Convention, the Republic of Bulgaria, as a party to the Convention, has ensured the right of victims of torture to be indemnified in a fair and adequate way, including means for their fullest possible rehabilitation. Many normative acts, including laws, resolutions of the National Assembly, ordinances, etc. were adopted during the period under review. They provided the legal grounds for undertaking considerable actions for a practical solution of these questions in each specific case.

59. The most comprehensive measure to that end is the Law on Political and Civic Rehabilitation of Persecuted Persons of 1991. It regulates, in a most exhaustive way, hypotheses envisaging the political and civic rehabilitation of persons who were unlawfully persecuted because of their origin or political and religious beliefs in the period 12 September 1944-10 November 1989. Article 2 of the Law indicates the persons who are entitled to a lump sum as an indemnification for property and non-property damages suffered. Under article 3, when the persons concerned are dead, their heirs are entitled to indemnification. The size of the compensation and the procedure are outlined in the Ordinance of 1992 on application of article 4 of the Law. Compensations are paid in cash or in vouchers to be used for purchasing shares and other property subject to privatization.

60. A central and a number of regional commissions for political and civic rehabilitation were set up on the basis of the Law and the Ordinance in order to establish the circumstances related to indemnification. Prior to the adoption of the Law and the Ordinance, the National Assembly adopted several decisions on political and civic rehabilitation of persons who were indicted or persecuted unlawfully. In practice, all legal, organizational and financial prerequisites were created for a full rehabilitation and fair compensation. A number of laws on amnesty and restitution of seized property were passed. The 1988 Law on the Liability of the State for Damages Caused to Citizens remained in force in the period under review. It stipulates liability for damages incurred due to unlawful acts, actions or inaction of State bodies and officials in connection with administrative activities as well as liability for acts of human rights institutions or legal bodies. According to the Law, the indemnification covers all property and non-property damages which are a direct and immediate consequence of the harm done by unlawful official conduct. The inheritance of the right to indemnification has also been provided for as well as the procedure and conditions of making a claim and hearing a case.

61. Therefore, article 14 of the Convention is incorporated and specified in the Bulgarian legislation and no other special regulations are needed to that end.

Article 15

62. There is no special indication in the Penal Procedure Code that statements made as a result of torture should be accepted as evidence that such a statement was made. This is a private hypothesis proceeding from the Convention. But the absence of an express text in the law cannot be accepted as an essential omission. By the fact of rat fication of the Convention and its entry into force, it has become an integral part of the Bulgarian legislation and supersedes any domestic norms in contradiction with the whole Convention and, in particular, with its article 15.

63. Under article 84 of the Penal Procedure Code, "evidence in the legal proceedings may be factual data related to the circumstances in the case, such that contribute to their elucidation and are ascertained by the procedure provided for in this Code". Accordingly, if the victim or any other person makes a statement accusing a person of committing torture, such statement is mandatorily attached to the other evidence with regard to the case and are interpreted by the court along with it. And if statements made in accordance with the respective procedure have not been clarified or, unjustifiably, have not been accepted as established, these are grounds for revocation or modification of the sentence by the second instance (article 328 of the Penal Procedure Code) or for "reopening penal cases due to newly found circumstances" (article 362 of the Penal Procedure Code). In the last hypothesis the court only revokes the sentence and returns the case for retrial (article 364, paragraph 1, of the Penal Procedure Code).

64. The principle of the inadmissibility of the use of torture to obtain evidence is laid down in article 31 (2) of the Constitution of the Republic of Bulgaria, which stipulates that "no one shall be forced to plead guilty and no one shall be convicted solely by virtue of a confession". In accordance with article 91 of the Penal Procedure Code, the accusation and the sentence may not be based on the confessions of the accused and do not exempt the corresponding bodies from their obligation to collect other evidence in the case.

Article 16

65. With reference to the obligation ensuing from article 16 of the Convention, article 29 (1) of the Constitution of the Republic of Bulgaria expressly states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment".

66. A number of texts in the Penal Code specify the notions of article 16 of the Convention, namely: "causing physical suffering or humiliating human dignity" (art. 36 (2)), "cruel treatment or systematic humiliation" (art. 127 (3), "a manner which is painful or dangerous to the health of the victim" (art. 142 (3)), "what is degrading for the honour and dignity of another person" (art. 146 (1)), "a shameful circumstance" (art. 147 (1)), etc.

67. By 1 August 1995 the total number of persons deprived of their liberty in prisons and corrective institutions was 8,920. Of them, 6,242 were convicts, 1,616 were defendants and 1,062 were under investigation.

68. It should be noted that the number of detainees is bigger than the capacity of the prison establishments. Living conditions are not good. Improvements should be made, namely expanding housing areas and improving sanitary facilities, bathrooms and washing rooms. Still, it would be an exaggeration to say that the existing conditions in these establishments contain elements of "other forms of cruel, inhuman or degrading treatment or punishment" in the sense of the Convention.

II. CONCLUSION

69. The Bulgarian authorities are confident that counteracting torture and other forms of cruel, inhuman or degrading treatment should be a constant concern of State institutions and civil society. Therefore, efforts are made not just to react adequately in order to bring perpetrators of torture to justice but, first and foremost, to take various measures to forestall such acts.

70. In this context, the Bulgarian authorities are determined to promote all legal and administrative prerequisites in order to guarantee the personal inviolability of the human being and the protection of its rights, and to prevent instances of violation of these rights, including torture.

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

LUXEMBOURG*

[3 August 1998]

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* For the initial report submitted by the Government of Luxembourg, see CAT/C/175/Add.29; for its consideration by the Committee, see CAT/C/SR.107 and 108 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/47/44), paras. 285-309.

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Introduction

1. The Grand Duchy of Luxembourg hereby submits its first supplementary report to the Committee against Torture in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The report deals with the new provisions in national legislation which are intended to improve the system for the protection of rights to physical integrity, and to prohibit torture and other cruel, inhuman or degrading treatment or punishment.

2. Since its dialogue with the Committee on 29 April 1992, the Government of Luxembourg has established a Constitutional Court, reformed its sentencing regime, made changes in the internal administration and regulations of prisons, and conducted a review of certain provisions of its Criminal Code and Code of Pre-Trial Proceedings in order to comply with the Committee's requests.

I. INFORMATION ON NEW MEASURES RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Sentencing Regime Act of 13 June 1994

3. Instead of amending the various articles to bring them into line with the new classification of custodial sentences, a blanket substitution has been made:

> "Article VII: In all legal and regulatory provisions in force when this law takes effect, the term 'imprisonment' shall be replaced by the term 'imprisonment for a term of between five and ten years'. In all legal and regulatory provisions, the terms 'hard labour' and 'detention' shall be replaced with the term 'imprisonment' and references to the provisions of the amended Act of 18 June 1879 shall be replaced with references to articles 130-1 and 132-1 of the Code of Pre-Trial Proceedings."

Grand Ducal Regulation of 18 March 1995 amending the Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons

4. The text has been amended as follows:

> "(a) Article 3, new paragraphs 4-6: Placement in solitary confinement or prolongation of this measure pursuant to a decision by the Principal State Counsel may not be used to deal with a detainee who is known to be dangerous unless he is able to state his point of view.
>
> The incommunicado prisoner shall be informed in writing of the reasons for his placement in solitary confinement or the prolongation of this measure.
>
> Placement in solitary confinement is subject to mandatory review at three-monthly intervals."

"(b) Article 8: Minors committed to Luxembourg prison or the Givenich agricultural colony in accordance with articles 6 and 24 of the Youth Protection Act shall be subject to an appropriate regime.

Minors committed to Luxembourg prison in accordance with article 26 of the same Act shall be placed in solitary confinement as defined in article 5 of this regulation."

"(c) Article 29: The chief medical officer shall direct the work of the medical service.

When he is absent or unable to perform his duties, or when the situation so require, he may be replaced or assisted by a physician approved by the Principal State Counsel.

The national rescue service shall be requested to provide assistance in emergencies."

"(d) Article 52, paragraph 1: To subject detainees to torture or cruel, inhuman or degrading punishment or treatment"; (paragraphs 1-17 of the article are renumbered 2-18).

"(e) Article 63, paragraph 3: The formulation of their working arrangements and leave planning as provided for in chapter 9 of the general civil service regulations is the responsibility of the prison governor."

"(f) Article 197, paragraph 11: Placement in solitary confinement for a maximum of six months. If the offence is repeated within three years, the disciplinary penalty may be set at 12 months."

"(g) Article 199: Placement in a punishment cell entails deprivation of work, radio, canteen access, leisure facilities and communal activities.

Placement in a punishment cell further entails deprivation of correspondence with the outside and discontinuation of visits subject to the provisions of articles 215, 226, 235 and 236.

Punishment in the form of deprivation of correspondence and visits does not apply to communication between detainees/prisoners, their counsel and members of the social services.

Incommunicado prisoners shall be permitted to walk alone for one hour in the prison yard, and shall have access to newspapers and books from the library.

All detainees shall have the right to lodge complaints as set out in articles 221 to 226."

"(h) Article 206: The punishments provided for in article 197, paragraphs 1 to 10, shall be imposed by the governor.

Punishments imposed on detainees and minors in Luxembourg prison in accordance with article 26 of the Youth Protection Act shall immediately be brought to the attention of the investigating judge, who has the power to modify them or order a temporary reprieve.

Punishments imposed on minors committed to either of the two facilities in accordance with article 6 of the Youth Protection Act shall immediately be brought to the attention of the competent children's judge, who has the power to modify them or order a temporary reprieve.

Punishments provided for in article 197, paragraphs 6-10, shall immediately be brought to the attention of the Principal State Counsel, who has the power to modify them or order a temporary reprieve.

Punishments provided for in article 197, paragraphs 11 and 12 shall be decided upon by the Principal State Counsel."

"(i) Article 228: The detainees and minors referred to in article 8, paragraph 2, may receive visits from anyone in possession of a visiting permit.

The permit displaying the name of the visitor shall be issued by the judicial officer entrusted with the preparation of the criminal case. When the judicial officer is taken off the case, the permit shall be issued by the representative of the State Counsel's Office attached to the court taking cognizance of the prosecution.

If the visitor does not belong to the category of persons listed in article 229, paragraph 1, he must also request prior authorization from the prison governor, who if necessary shall obtain prior advice from the social protection service.

Should the governor turn down the request, the detainee, minor or visitor can appeal the decision as provided for by article 212.

Unless specified otherwise, a visitor's permit is valid for one half-hour visit only as indicated on the permit."

"(j) Article 230: Prisoners and detainees placed in punishment cells shall be deprived of visits, with the exception of those provided for in articles 235 and 236, for the duration of the disciplinary measure."

"(k) Article 245, paragraph 1: Prisoners may be permitted to place outside telephone calls in accordance with arrangements to be determined by the prison governor."

"(l) Article 247, paragraph 1: Prisoners at the Givenich agricultural colony may be permitted to absent themselves temporarily from the institution during prescribed visiting hours specified by the Principal State Counsel.

Detainees benefiting from such arrangements shall be designated by the Principal State Counsel on the recommendation of the prison governor and the social protection service."

Act of 18 August 1995 amending the Act of 28 March 1972 on:

(1) The entry and residence of aliens;

(2) Medical examinations for aliens;

(3) The use of foreign labour;

(4) The text has been amended as follows:

"Article 14, paragraph 3: An alien shall not be expelled or deported to another country if he can establish that his life or freedom would thereby be seriously endangered, or that he would be treated in a manner contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

Constitutional amendment of 12 July 1996

5. The Constitutional Court has been established by article 95 ter of the Constitution, which is part of the chapter dealing with the judiciary. The Superior Court of Justice is the highest-ranking body in Luxembourg's system of ordinary courts. Since 1 January 1997, the highest court in the field of administrative and fiscal litigation has been the Administrative Court, in accordance with article 95 bis of the Constitution. The Constitution specifies that the sole function of the Constitutional Court is to oversee the constitutionality of legislation. Treaties and the acts by which they are ratified are expressly excluded from this definition.

"Article 95 ter (1): The Constitutional Court shall issue rulings in the form of judgements on the constitutionality of legislation.

(2) The Constitutional Court shall receive submissions from any court, on a preliminary basis and in accordance with arrangements to be specified by law, with a view to issuing a ruling on the constitutionality of legislation, with the exception of treaty ratification acts.

(3) The Constitutional Court shall be composed of the President of the Superior Court of Justice, the President of the Administrative Court, two judges from the Court of Cassation and five judicial officers appointed by the Grand Duke on the joint advice of the Superior Court of Justice and the Administrative Court. The provisions of articles 91, 92 and 93 shall apply to them. The Constitutional Court shall also have a division consisting of five judicial officers.

(4) The organization of the Constitutional Court and the manner in which it exercises its powers shall be specified by law."

Bill amending:

(a) Certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973;

(b) The Act of 17 March 1992:

1. Ratifying the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988;

2. Amending and updating the Sale of Medicinal Substances and Drug Addiction Control Act of 19 February 1973;

3. Amending and updating certain provisions of the Code of Pre-Trial Proceedings;

(c) The Insider Dealing Act of 3 May 1991; and

(d) The Act of 26 July 1986 on certain modes of enforcement of custodial sentences

6. A number of detainees are drug addicts. In order to avoid deaths from drug- or medicine-related overdoses, prevent drugs and medicines from entering prison and combat the spread of diseases such as AIDS or hepatitis in penal institutions, prison staff must be able to search detainees at any time in order to trace and locate drugs and medicines when there are strong indications that these substances are being used.

7. The proposed text amplifies article 4 of the Drugs Act and reproduces the terms originally provided for in article 1, paragraph 5, of the draft Grand Ducal regulation amending the Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons.

8. In its opinion on this draft regulation, the Conseil d'État (national body advising the Government on legislation) considered that some of the powers which the draft had sought to confer on prison warders were not simply measures to maintain order, discipline and security at penal institutions or to protect the physical health of detainees; similar powers are vested in the criminal investigation service. In the latter institution, however, certain officials and representatives of the authorities and public services derive their powers from legislation.

9. The amended Drugs Act of 19 February 1973 is silent on the question of intervention by prison staff, but the final section of article 8 nevertheless makes provision for an aggravating circumstance when an offence is committed inside a prison.

10. The proposed textual amendments pertaining to solitary confinement applied as a disciplinary measure take account of the observations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, with special reference to the duration of the measure and the detainee's opportunity to lodge an appeal. The penal commission

provided for in article 12, paragraph 1, of the Custodial Sentences Enforcement Act of 26 July 1986 is responsible for examining appeals. This commission has the power to show leniency to prisoners serving sentences of more than two years; its members are well acquainted with the detainees' case files and are thoroughly qualified to decide on the matter of appeals. However, with the exception of a hypothetical appeal to the administrative courts, the regulations as they currently stand do not specifically refer to a detainee's right to appeal a decision to place him in solitary confinement.

11. The final paragraph of article 4 of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973 has been amended as follows:

> "Such examinations and the taking of blood samples shall be carried out on the orders of the investigating judge, the State Counsel, officers of the gendarmerie, police force or customs authority, or persons appointed by the Ministry of Health (in accordance with article 2) who have established the fact, or by the representative of the Principal State Counsel in the prisons, the prison governor, the chief warder or the official deputizing for them. The procedures governing medical examinations and the taking of blood samples shall be specified by a public authority regulation with the advice of the Medical College. The questionnaires to be completed by the physician during these procedures shall be specified by ministerial regulation with the advice of the Medical College."

12. Regarding the introduction of a semi-custodial regime, it should be noted that the Act of 26 July 1986 on certain modes of enforcement of custodial sentences provides for the splitting up of custodial sentences of one year's duration or less. The intention is to preserve family and work ties intact.

13. The Act of 26 July 1986 on certain modes of enforcement of custodial sentences has been amended as follows:

> "Article 2-1 - If the professional or family situation of the prisoner so requires, and if his personality so warrants, the flexible custodial sentence may be served according to the semi-custodial system, whereby the prisoner must work at a penal institution during the day and return home outside working hours. The practical arrangements governing the semi-custodial system shall be specified by Grand Ducal Regulation."

14. The provisions proposed for the new section IV (1) of the Act of 26 July 1986 on certain modes of enforcement of custodial sentences reproduce the text originally contained in paragraph 11 of the draft Grand Ducal regulation amending the Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons.

15. The Conseil d'État has issued an opinion stating that this draft Grand Ducal regulation is not the appropriate instrument for extending the powers of the penal commission, and that the Act of 26 July 1986 should be amended instead.

"Article 11-1 - When a detainee is placed in solitary confinement, either as a disciplinary measure or because he is known to be dangerous, the detainee concerned may lodge an appeal with the commission provided for in article 12, paragraph 1.

Neither the Principal State Counsel, nor his representative who took the contested decision, shall sit on the commission.

Should it deem necessary, the commission may undertake whatever investigative measures it considers to be helpful.

Notwithstanding the appeal, the decision shall be immediately enforceable.

The commission must rule on the matter within 15 days of the date on which the appeal was lodged by letter.

Rejection of an appeal must be substantiated."

Bill on

(1) The adaptation of domestic law to the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, ratified by the Act of 31 July 1987;

(2) The transposition of certain recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(3) The amendment of certain provisions of the Criminal Code and the Code of Pre-Trial Proceedings;

(4) The amendment of the Foreign Criminals Extradition Act (amended) of 13 March 1870

16. The proposed article reproduces the definition of acts of torture given in article 1 of the United Nations Convention. Such acts need to be punished with greater severity because they constitute especially obnoxious conduct. Although acts of this kind are fortunately unknown in Luxembourg at the present time, they should nevertheless be criminalized in order to close a loophole in the country's legal system, since the punishments stipulated in the Criminal Code for assault and battery are not really commensurate with this type of conduct. The issue does not simply involve conventional physical torture but also mental torture, which is far more subtle and appears to be a characteristic of modern times.

17. Torture is a crime which can only be committed intentionally, since its purpose is either to bring about a certain result or to inflict punishment on a victim.

"Article 260-1 - Any public official in a position of authority, any public servant, or anyone acting at the instigation or with the express

or tacit consent of such an individual, who wilfully inflicts torture in such a manner as to cause pain or acute physical or mental suffering in order to extract information or confessions from an individual or third party; to inflict punishment for an act which an individual or third party has either committed or is suspected of having committed; to intimidate or put pressure on an individual or third party; or for any other reason based on any form of discrimination whatsoever, shall be punishable by imprisonment for 5 to 10 years.

Article 260-2 - If the torture inflicted has resulted in illness or incapacity for work, the penalty shall be imprisonment for 10 to 15 years.

Article 260-3 - If the torture inflicted has resulted in apparently incurable illness, permanent incapacity for work, complete loss of use of an organ, or severe mutilation, the penalty shall be imprisonment for 15 to 20 years.

Article 260-4 - If the torture inflicted has caused death albeit unintentionally, the penalty shall be life imprisonment."

18. The following articles of the Code of Pre-Trial Proceedings establish, in accordance with article 5, paragraph 1 (c) of the United Nations Convention and in the absence of relevant legal provisions in Luxembourg, a special jurisdiction enabling the Luxembourg courts to deal with hypothetical cases in which the victim is a citizen or a resident of the Grand Duchy. The Government hopes to ensure in the broadest terms that torture is prosecuted and punished in cases where, for example, the State in which the crime was committed does not criminalize this class of offence.

19. Since the ordinary law is not applicable to this jurisdiction, it has not been thought expedient to extend it to other offences or to turn it into a general principle, especially as it is always difficult to assemble sufficient evidence in respect of offences committed abroad.

"Article 7-1 - Anyone outside the territory of the Grand Duchy who has committed one of the offences provided for in articles 260-1 to 260-4 of the Criminal Code against a citizen or resident of Luxembourg can be prosecuted and tried in the Grand Duchy.

However, no proceedings shall be instituted against an accused person who has been tried for the same offence in a foreign country and acquitted.

The same shall apply if, having been tried and convicted, he has served his sentence, or the punishment has been time-barred, or he has been pardoned.

Any period of detention served abroad in consequence of the offence which gives rise to a conviction in the Grand Duchy shall be set against the period of any custodial sentence."

20. In accordance with article 3, paragraph 1, and article 5, paragraph 2, of the United Nations Convention, it has been necessary to institute a universal and active jurisdiction to ensure that criminals do not go unpunished as a result of non-extradition. This universal jurisdiction is limited to these very specific cases and cannot give rise to a general principle.

> "Article 7-4 - Anyone in a foreign country who has committed one of the offences provided for in articles 260-1 to 260-4 of the Criminal Code can be prosecuted and tried in the Grand Duchy when an application for extradition has been submitted but the person concerned has not been extradited."

21. The proposed amendments to articles 39 and 45 of the Code of Pre-Trial Proceedings are intended to give effect to a number of recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

22. A detainee is informed by law-enforcement officers of his right to communicate news of his arrest to an individual of his choosing.

23. To ensure that the detainee is able to communicate with a member of his family or another individual of his choosing, a telephone is placed at his disposal. To ensure that this right is not abused, only one telephone communication is permitted.

24. The present text of article 39 of the Code of Pre-Trial Proceedings gives State Counsel the power to order a medical examination.

25. If they consider it necessary, law-enforcement personnel may also summon a medical officer to examine a person being held in a detention cell.

26. The proposed amendment vests an independent right in a person detained by the gendarmerie or the police force so that, in any event, the detainee may himself ask to be examined by a medical officer.

27. To guard against the possibility that a detainee might not understand the language in which he is informed of his rights by law-enforcement officers, a pre-drafted explanatory note listing his rights and written in a language he understands is handed to him at the time of his arrest. The detainee signs the note and indicates the date and time he affixed his signature.

28. To ensure that these rights are put into practice, the proposed text makes it mandatory for officers of the criminal investigation service to inform the detainee of his rights in a language he understands and to include in the list of items which must appear on the written record of the interview (duly signed) a declaration by the detainee stating that he has been informed of his rights under article 39. It should also detail any urgent requirements of the investigation which might have resulted in a denial of one right conferred in paragraph 3 or a delay in exercising it.

"Article 39 (1) If the circumstances of the investigation so require, and with the permission of the State Counsel, an officer of the criminal investigation service may detain for a maximum of 24 hours persons against whom the evidence is sufficiently serious and compelling to warrant the bringing of charges.

(2) The 24-hour period shall begin from the moment of arrest by a police officer.

(3) Unless the circumstances of the investigation dictate otherwise, the detainee shall immediately be informed in writing and against a receipt, and in a language he understands, of his right to communicate with a person of his choosing. A telephone shall be provided for this purpose.

(4) The State Counsel may order the necessary identification procedures to be carried out, specifically the taking of fingerprints and photographs of the detainee.

(5) If the detainee is suspected of concealing evidence that might prove useful in ascertaining the truth or items that might be hazardous to himself or others, he may be subjected to a body search by a person of the same sex.

(6) At the time of his arrest, the detainee shall be informed in writing and against a receipt, and in a language he understands, of his right to be examined without delay by a medical officer. In addition, the State Counsel may at any time either as a matter of course or at the request of a member of the detainee's family, appoint a medical officer to carry out an examination.

(7) Before conducting an interview, the officers and representatives of the criminal investigation service specified in article 13 shall notify the interviewee, in a language he understands, of his right to have the assistance of a lawyer selected from lists I and II of the table of advocates.

(8) Written records of interviews of detainees shall indicate the date and time at which the individual was informed of his rights under paragraphs 3, 6 and 7 of this article, and, if applicable, the reasons for denying or delaying the exercise of the right conferred under paragraph 3, the duration of the interviews and the rest periods between them, and the date and time of arrest, release or appearance before the investigating judge."

29. A further proposed amendment seeks to bring article 45, paragraph 4, into line with article 39, paragraph 3, of the Code of Pre-Trial Proceedings regarding the suspect's right to communicate with a person of his choosing.

"Article 45 (4) - At the time of his arrest, the detainee shall be informed in writing and against a receipt, and in a language he understands, of his right to communicate with a person of his choosing. A telephone shall be provided for this purpose."

30. Another amendment aims to update the list of offences contained in the Act of 13 March 1870 for which the judge may order the extradition of a foreign criminal located in Luxembourg pursuant to a request from the foreign authorities.

31. It is not necessary to amend the extradition treaties concluded by Luxembourg on this point because the United Nations Convention implicitly amends the treaties concluded between its signatories.

32. The Foreign Criminals Extradition Act (amended) of 13 March 1870 has been updated as follows:

(a) "Article 1-31 - for offences covered by articles 260-1 to 260-4 of the Criminal Code."

(b) "Article 8-1 - No person shall be extradited where there are substantive grounds for believing that he would be in danger of being subjected to torture as defined in articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

II. INFORMATION OF A GENERAL NATURE REQUESTED BY THE COMMITTEE

A. Abolition of the death penalty

33. In reply to the views expressed by several members of the Committee during the presentation of the initial report regarding the advisability of eliminating all reference to the death penalty in legal provisions, it should be pointed out that the Act of 20 June 1979 "abolishes the death penalty for all crimes and replaces it with the penalty immediately below it in rank". Given that this is the only sure way to avoid an oversight when amending the various texts involved, this approach should be interpreted as a precaution. Furthermore, the reader is informed of the existence and content of this Act in a prefatory note to the Criminal Code.

34. On the international level, by the Act of 21 November 1984 the Government ratified Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, signed on 28 April 1983.

B. Abolition of hard labour

35. In order to avoid any confusion about the interpretation of hard labour as provided for under former article 7 of the Criminal Code, the Sentencing Regimes Act of 13 June 1994 stipulates that "in all legal or regulatory provisions, the terms 'hard labour' and 'detention' shall be replaced by the term 'imprisonment'".

C. Confinement of untried and convicted prisoners

36. The confinement of untried and convicted prisoners is governed by the Grand Ducal Regulation of 24 March 1989, subsequently amended by that of 18 March 1995.

37. Disciplinary sanctions. Breaches of laws, regulations and instructions, and acts of disobedience, indiscipline and insubordination, are punishable according to circumstances and the gravity of the offence. After examination of the case by the prison governor or his appointed representative, a punishment may be selected from a strictly defined list, as follows: (a) placement in a punishment cell for a maximum of 30 days; (b) placement in solitary confinement for a maximum of six months, or twelve months in the case of a repeat offence. Solitary confinement means that the detainee shall be confined alone 24 hours a day. This punishment may only be applied subsequent to an examination by a medical officer, who must certify in writing that the detainee is in a fit state to withstand the punishment. Solitary confinement entails deprivation of radio, canteen visits, leisure and communal activities, as well as discontinuation of correspondence with the outside world, cessation of visits (subject to the detainee's right to lodge an appeal or a complaint), and correspondence with his counsel or diplomatic representatives from an embassy if the detainee is a foreign national.

38. Solitary confinement. The following categories of detainee may be placed in solitary confinement following a decision by the Principal State Counsel: (a) detainees considered to be dangerous, after their views have been heard; (b) detainees subject to a disciplinary measure, once they have been notified in writing of the reasons for their placement in solitary confinement or the prolongation of this punishment. The detainee must be examined by a medical officer as a matter of course prior to the implementation of this punishment; a medical examination must also be conducted at least twice a week for the duration of the punishment. The arrangements for this regime are specified under instructions from the Principal State Counsel. In the implementation of this regime, detainees are kept segregated 24 hours a day. Contact is limited to prison staff and duly authorized visitors. The new Grand Ducal Regulation of 1995 stipulates that a detainee placed in solitary confinement, either for disciplinary reasons or because he is considered to be dangerous, may lodge an for appeal with the penal commission. The commission, which includes the representative of the Principal State Counsel who took the contested decision, may undertake all necessary inquiries and must rule on the matter within 15 days of the date of submission of the appeal. The rejection of the appeal must be substantiated.

39. Punishments imposed on a minor. Under article 38 of the Youth Protection Act of 10 August 1992, the punishment imposed on a minor who has been committed either to Luxembourg prison or to a re-education centre must immediately be reported to the investigating judge or the children's judge who has the power to modify the punishment or order a temporary reprieve. In order to ensure that the minor is protected to the maximum extent, only the Principal State Counsel can impose punishment on a minor who has been committee to Luxembourg prison.

D. System of judicial sentencing

40. The sentencing regime has been extensively modified by the Act of 13 June 1994, which is an integral part of the Criminal Code. The tripartite distinction between serious crimes, other major offences and minor offences continues to be defined by the length of the sentence prescribed in each case.

41. Penalties for serious crimes are as follows:

(a) Life imprisonment or imprisonment for a specified period of 5-10 years, 10-15 years, 15-20 years, and 20-30 years;

(b) A fine of at least Lux F 10,001;

(c) Special confiscation (mandatory in the case of custodial sentences);

(d) Dismissal from public appointments, grades, duties, functions and offices (mandatory in the case of custodial sentences);

(e) Deprivation of certain civil and political rights;

(f) Closure of enterprise and establishment;

(g) Publication or posting, at the convicted person's expense, of the text of the sentence either in full or in part;

(h) Disbarment from carrying out certain professional activities.

42. Penalties for other major offences, without prejudice to other penalties provided for under special laws, are as follows:

(a) Imprisonment for a term of between eight days to five years, except in cases where the law prescribes other limits;

(b) A fine of up to Lux F 10,001;

(c) Special confiscation;

(d) Deprivation of certain civil and political rights;

(e) Closure of enterprise and establishment;

(f) Publication or posting, at the convicted person's expense, of the text of the sentence either in full or in part;

(g) Disbarment from carrying out certain professional activities;

(h) Disqualification from operating certain motor vehicles;

(i) Alternative sentences as provided for in articles 21 and 22.

43. Penalties for minor offences are as follows:

(a) A fine ranging from Lux F 1,000 to 10,000, except when the law states otherwise;

(b) Special confiscation;

(c) Disqualification from operating certain motor vehicles.

44. Imprisonment has been abrogated in respect of minor offences by the Act referred to above.

45. For each major offence a primary penalty is specified. The judge is bound to impose a primary penalty, namely a custodial sentence or a fine.

46. Ancillary penalties are additional sanctions, some of which are mandatory and others dependent on the judge's discretion. Ancillary penalties under the Criminal Code are dismissal from appointments, deprivation of certain civil and political rights, special confiscation, and certain penalties provided for under special laws, for example closure of establishment, disqualification from piloting an aircraft, prohibition of hunting or fishing, demolition of a structure, and a ban on residing in certain areas.

47. The Act of 13 June 1994 establishes a third category, namely alternative penalties. If the court is of the opinion that the major offence does not warrant a custodial sentence exceeding six months, it may specify that, as a primary penalty, the convicted person must perform unpaid work of a general nature.

E. Status of judges

48. The personal status of judges is determined by the constitutional provisions regarding their appointment, irremovability, salary and incompatibilities with regard to their duties (articles 91-93 of the Constitution).

49. All judges are appointed by the Grand Duke, regardless of their rank in the judicial hierarchy. Stipendiary magistrates and court judges are appointed directly by the Grand Duke, whereas judges of the Superior Court of Justice and presidents and vice-presidents of district courts are appointed on the advice of the Superior Court of Justice.

50. Judges are irremovable, in other words they cannot be suspended or dismissed other than by a judicial decision. No judge may be transferred except by way of appointment and with his consent. By providing for the irremovability of stipendiary magistrates, the constitutional amendment of 20 April 1989 closes a final loophole. In the event of misconduct, pursuant to a submission by the Principal State Counsel, the Superior Court of Justice sitting in chambers may decide to suspend or dismiss a judge. Such a decision has the force of a judgement.

51. The Principal State Counsel is appointed by the Grand Duke at the suggestion of the Minister of Justice.

52. Because staff of the State Counsel's Office are the representatives of the executive in the courts, the constitutional provisions intended to reinforce the independence of judges do not apply to them. As an arm of the Government, and by virtue of the principle of the separation of powers, they are entirely independent of the courts in which they perform their duties.

53. In order to ensure that the Constitutional Court is able to deliver its judgements in complete independence, the constituent instrument of 1996 specified that the Court must be composed solely of professional, independent and irremovable judicial officers.

F. Police custody procedure (article 39 of the Code of Pre-Trial Proceedings)

54. When a person is apprehended in the very act of committing a crime or other major offence for which the law prescribes a custodial sentence, an officer of the criminal investigation service may detain the individual for a maximum of 24 hours when the evidence is sufficiently serious and compelling to warrant the bringing of charges and authorization has been obtained from the State Counsel. This period begins as soon as the individual has been arrested by a police officer. In the bill on police custody, the Government intends to strengthen substantially the rights of detainees in order to avoid any abuse of authority.

55. Moreover, under the Act of 18 December 1855, subsequently amended by the Act of 26 July 1986, any alien non-resident of the Grand Duchy who is charged with a major or minor offence punishable by a fine may be placed under temporary arrest and detained. The detainee shall be held in a remand prison on the strength of a committal warrant issued by the investigating judge. If the offence is a minor one, the detainee may be kept in a temporary holding facility in the administrative centre of the canton on the strength of an ordinance issued by the stipendiary magistrate.

56. Temporary arrest or detention is not required (a) if the alien can demonstrate that he owns a commercial establishment or property of sufficient value in the territory of Luxembourg; (b) if he deposits a sum of money to be determined by the reporting officers or, at the offender's request, either by the burgomaster or by the stipendiary magistrate or investigating judge, to cover the total amount of fines, confiscations and expenses; (c) if he can find a solvent Luxembourg resident willing to stand bail for him.

57. In the case of major offences, temporary arrest or detention must end if no summons to appear before a court has been served within 10 days, except when the warrant has been upheld and confirmed by judges in chambers on the basis of a report from the investigating judge. In the case of minor offences, it must end if no summons has been served within three days or judgement has not been passed within eight days. The investigating judge or stipendiary magistrate cancels the warrant or ordinance in the course of preparing the case for trial.

G. Pre-trial detention procedure (article 94 of the Code of Pre-Trial Proceedings)

58. Under the Code of Pre-Trial Proceedings, procedure differs according to whether the accused is resident or non-resident in the Grand Duchy.

59. Following the questioning of a detainee who is a resident of Luxembourg, the investigating judge may issue a committal warrant (a) if there is strong prima facie evidence against him; (b) if the charge carries with it a penalty for a serious crime or other major offence involving a maximum prison term of two years or longer, and (c) if there is a danger that the suspect might abscond (a lawful assumption since the charge is punishable by a penalty for a serious crime). A warrant may also be issued if there is a danger that evidence might be concealed or if there are grounds for believing that the suspect might abuse his freedom to commit further offences.

60. Following the questioning of a suspect who is not a resident of Luxembourg, a committal warrant may be issued if there is strong prima facie evidence against him or if the charge carries with it a penalty for a serious crime or a custodial sentence for another major offence.

61. Warrants must be specific to the facts of the case.

H. State security organs

62. In his capacity as the executive branch, the Grand Duke watches over the maintenance of public order and the protection of the internal and external security of the country. In order to facilitate the practical exercise of this right, article 37 of the Constitution confers on him the supreme command of the armed forces. The armed forces of Luxembourg comprise the army, the gendarmerie and the police. A bill to merge the gendarmerie and the police has been introduced and is currently being examined by Parliament.

I. Prison population

63. To enable members of the Committee to form a meaningful idea of the shifting size of the prison population, relevant statistics from recent years have been annexed to this report.

J. State Security Court

64. The Grand Duchy has three military courts, namely the Court Martial, the Military Court of Appeal, and the Military High Court.

65. Whereas courts martial have cognizance of breaches of the Criminal Code and the Military Court of Appeal has cognizance of appeals against judgements handed down by courts martial, the Military High Court has sole jurisdiction over serious crimes and other major offences against the security of the State (articles 113-123 of the Criminal Code); breaches of the Geneva Conventions of 12 August 1949 for the protection of the victims of war, ratified by the Act of 23 May 1953; acts of treason and sabotage provided for under the Military Criminal Code; and in wartime, serious crimes and other major offences against

the security of the State provided for under the Criminal Code. No allowance is made for the rank of persons who commit such crimes or those who aid and abet them.

66. Adjudicatory decisions of the Military High Court are not subject to appeal. However, such decisions may be subject to an application for review by way of cassation. The application is heard before a division of the court specially constituted for that purpose which comprises three judges who rule on the admissibility of the application on the basis of pleadings by the parties. The judgement is delivered at a public hearing. The applicant has no right of appeal if the application is dismissed. If it is allowed, the case is referred to the Court of Cassation for a ruling.

K. Habeas corpus

67. There is no equivalent of habeas corpus in Luxembourg. All arrests and detentions conform to the Code of Pre-Trial Proceedings.

L. State of emergency

68. In his capacity as the executive branch, the Grand Duke watches over and protects the internal and external security of the country. In order to enable him to perform this duty, article 37 of the Constitution confers on him the command of the armed forces. By virtue of this fact, and assisted in certain cases by the gendarmerie, the army is responsible for the external security of the country in wartime and its internal security in the event of rioting, unlawful assembly or serious interference with or threats to public order.

69. Military personnel are subject to the jurisdiction of courts martial for breaches of the law committed in the performance of their duties.

III. ADDITIONAL INFORMATION RELATING TO THE ARTICLES OF THE CONVENTION

A. Article 1

Definition of torture

70. The only kinds of torture formerly punishable in Luxembourg were acts committed by individuals against detainees (article 438 of the Criminal Code). However, this provision did not sufficiently punish custodians employed by a public authority who intentionally committed torture in the course of their duties.

71. Although such acts are fortunately unknown in Luxembourg at the present time, this legal loophole has now been closed. The issue involves not just conventional physical torture but also mental torture, which is far more subtle and appears to be a characteristic of modern times.

72. This issue is dealt with in articles 260-1 to 260-4 of the new Criminal Code.

Conclusion of international treaties

73. The Grand Duke negotiates and signs treaties through his diplomatic officers or specially mandated representatives. Since Parliament in the guise of the Chamber of Deputies does not form part of this process, the signature of treaties does not bind the State legally.

74. The Chamber of Deputies approves treaties by a majority vote. The Grand Duke's ratification takes the form of an approbatory formula affixed to a copy of the treaty which serves as a diplomatic instrument. The next stage is the exchange of instruments of ratification. This consists of the dispatch to each State party of an instrument which has been duly ratified by the other States parties and the depositing of the instruments with the designated State.

75. Although the treaty is legally binding from an international point of view, it must be promulgated and published in order to be domestically binding. Promulgation and publication are implemented by means of an Act ratifying the treaty.

76. Because the domestic implementation of treaties is akin to that of Acts by virtue of article 34 of the Constitution, a treaty and related amendments to domestic law must be published in the official journal of the State, the Mémorial.

Primacy of international treaties

77. The primacy of international treaties is ensured in two ways:

(a) The rule of interpretation: it must always be assumed that the legislator intended to comply with existing international commitments. Therefore, domestic law is always interpreted in such a way as to align it with treaty obligations;

(b) The rule of hierarchy: a treaty prevails over a domestic law, even retroactively, because the source of the treaty is higher than the will of a domestic body.

Conflicts between domestic provisions and an international convention

78. The solution to a conflict of this nature differs according to whether the domestic provision is an administrative act or a statute. According to article 95 of the Constitution, a regulatory act which is contrary to a treaty can only be applied by the courts. If the domestic provision is a statute, it should be determined whether it antedates or postdates the treaty. A treaty which postdates a statute overrides it. When a statute postdates a treaty and is incompatible with it, the international treaty takes precedence over the domestic statute, even though it postdates the treaty. When two statutes are of unequal value, the treaty takes precedence over the will of a domestic body by virtue of its inherent superiority.

79. With reference to European community law, the Conseil d'État has adopted the principle of the pre-eminence of treaties, as well as that of the autonomous nature of community law.

Supervision of the constitutionality of legislation

80. A Constitutional Court entrusted with supervising the constitutionality of legislation passed by Parliament has been established by the constitutional amendment of 12 July 1996 (article 95 ter of the Constitution). The Constitutional Court is part of the judiciary, as are the ordinary courts and the new administrative courts.

81. In accordance with the Constitution and to the extent that the Constitutional Court is an independent court occupying the highest rank in the hierarchy of courts, the Grand Duke, as Head of State, must appoint its members.

82. According to the Constitution, the sole function of the Constitutional Court is to supervise the constitutionality of legislation. Treaties and their ratifying acts are expressly excluded from this requirement.

83. The Conseil d'État, which gives an opinion on all bills, exercises an a priori political monitoring function on the constitutionality of legislation.

84. When a party raises the issue of whether a particular statute is constitutional in the courts, the court involved is under an obligation to refer the matter to the Constitutional Court. Courts are exempt from referring the matter to the Constitutional Court in three cases: when the court does not need to take a decision on the issue of constitutionality in order to render its judgement; when the issue of constitutionality is specious; and when the Constitutional Court has already issued a ruling on a similar matter.

85. If the Constitutional Court decides that the provision which has been referred to it is constitutional, there are no consequences for the referring judge or the legislator. On the other hand, if the statute is found to be unconstitutional, the legislature must study the Court's judgement with a view to amending the law in order to make it constitutional, or amending the Constitution if the necessary preconditions obtain.

86. To ensure that the Constitutional Court is able to deliver its judgements in complete independence, the 1996 constituent instrument established that the Court must be composed solely of professional, independent and irremovable judicial officers.

B. Article 2

87. Given the lack of legal provisions in this matter, a special jurisdiction of Luxembourg's courts has been established with a view to dealing with cases in which the victim is a national or a resident of Luxembourg. This jurisdiction will ensure in the broadest terms that torture

is punished and prosecuted in cases where, for example, the State in which the offence was committed does not criminalize this class of offence.

88. Since the ordinary law is not applicable to this jurisdiction, it has not been thought expedient to extend it to other offences or to turn it into a general principle, especially as it is always difficult to assemble sufficient evidence in the case of offences committed abroad.

89. Moreover, it has been necessary to institute a universal and active jurisdiction to ensure that criminals do not go unpunished as a result of non-extradition.

C. Article 3

Extradition procedure

90. In matters of extradition, it is important to distinguish two possible situations, namely extradition between States bound by a bilateral or multilateral convention and extradition between States not bound by a convention. In the latter case, the Foreign Criminals Extradition Act (amended) of 13 March 1870 permits the Government to hand over to foreign governments, on a reciprocal basis, any alien in pre-trial detention, charged with an offence, or convicted in the courts of the two countries of an a offence according to law.

91. As a result of the concerns expressed by the Committee, the offences listed in the law of 13 March 1870 for which a judge may order the extradition of a foreign criminal in Luxembourg to requesting foreign authorities have been amplified in the bill referred to above.

92. Extradition may only proceed upon presentation of the court judgement, the ordinance of judges in chambers, the judgement of the relevant division of the Court of Appeal or the criminal procedural act issued by a competent judge after hearing the advice of the Superior Court of Justice sitting in chambers. The State Counsel's Office and the alien, who may be represented by a lawyer, plead their respective cases at the public hearing.

93. Within 15 days of the submission of all papers and documents, these are referred to the Minister of Justice together with the substantiated opinion of the relevant division of the Court of Appeal. The Minister then issues a ruling on the request for extradition in line with a decision of the Government meeting in council.

94. Extradition by way of transit across Luxembourg may be authorized without seeking the opinion of the relevant division of the Court of Appeal when the requesting and requested State are bound to Luxembourg by a treaty that covers the offence giving rise to the request for extradition. Extradition may not proceed if, since the date of the alleged offence, prosecution or sentence, the offence or the penalty for it has been extinguished under Luxembourg law. Through the legislative amendment referred to above, extradition may not proceed if there are substantial grounds for

believing that the person facing extradition would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Expulsion

95. In accordance with the Act of 28 March 1972 (amended) on (1) the entry and residence of aliens; (2) medical examinations for aliens; (3) the use of foreign labour, and specifically article 12 thereof, the law-enforcement services may expel the following categories of aliens unauthorized to reside in the territory of Luxembourg simply by stating the fact in an official report addressed to the Ministry of Justice:

(a) Vagrants, beggars and persons contravening regulations on peddling;

(b) Persons lacking adequate financial means to pay their travel and accommodation costs;

(c) Persons refused entry to the country under article 2 of the Act;

(d) Persons without proper identity papers or a visa, if one is required;

(e) In the cases provided for under article 2, paragraph 2, of the implementing Convention of the Schengen Agreement, persons found to be in breach of the Arms and Munitions Act (amended) of 15 March 1983 or persons likely to compromise public security, peace and order.

96. The following categories of aliens may be expelled from Luxembourg even when extradition has not been requested: (a) aliens who have been denied a foreign identity card, or whose identity card has been cancelled; (b) aliens who prolong their stay in the country after being duly warned that entry, residence or settlement in Luxembourg has been denied, or after being notified of a decision not to renew or to cancel their identity card; (c) aliens who re-enter the country within two years of being expelled or escorted to the border, in accordance either with article 12 of the Act or with article 346 or article 563, paragraph 6, of the Criminal Code. The decision to expel an alien is taken by the Minister of Justice and published through administrative channels.

97. When expulsion or refoulement is impossible owing to circumstances, and the Minister of Justice so decides, the alien may be committed to an appropriate establishment for a period of one month, renewable on two occasions. When the matter cannot be referred to the Minister of Justice immediately, the alien may be held with the authorization of the State Counsel for a maximum of 48 hours from the moment the authorization is issued. This form of detention, which must be detailed in an official report prepared by an officer of the criminal investigation service, should specify the circumstances, date and time of the State Counsel's authorization, a statement by the detainee that he has been informed of his rights, and the date and time of release or notification of the Minister of Justice's decision on committal. The official report is transmitted to the State Counsel and copies are sent to

the Minister of Justice and the detained alien. The detained alien is entitled to have the free assistance of an interpreter in order to protect his interests.

98. The alien is immediately informed of his right to communicate with his family or a person of his choosing. A telephone is made available for this purpose.

99. The alien is immediately informed of his right to be examined by a medical officer, to choose a lawyer or to have a lawyer appointed for him by the chairman of the Luxembourg bar.

100. Fingerprints and photographs may not be taken unless it is absolutely essential to establish the identity of the detained alien.

101. Notification of a committal decision must be included in a written report prepared by the officer of the criminal investigation service conducting the inquiry. This report must mention, inter alia, the date of notification of the decision, the detainee's statement that he has been informed of his rights and any other statements he wishes to make, and the language in which his statements have been made. The report is presented to the detainee for signature. If he refuses to sign, the fact is noted and the reason recorded.

102. Committal decisions may be appealed to the Administrative Court.

103. An alien may not be expelled or deported to another country if he can establish that his life or freedom would be seriously endangered or he would be treated in a manner contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

D. Article 9

Mutual judicial assistance (not governed by an international convention)

104. In relations with countries which are not signatories to an international convention, international letters rogatory are covered by article 59 of the Judicial Organization Act (amended) of 7 March 1980:

> "With the exception of provisions arising from international treaties, judges shall not accede to a letter rogatory originating from foreign judges unless authorized to do so by the Minister of Justice, in which case they are under an obligation to pursue the matter."

105. The main purpose of the bill on mutual judicial assistance which has been placed before Parliament is to establish a system for supervision and remedies in respect of requests for mutual judicial assistance in criminal matters. This system is partially based on the practice currently followed in respect of domestic pre-trial remedies. The provisions on remedies aim to simplify and expedite procedures, while at the same time eliminating abuses and delaying manoeuvres.

Letter rogatory

106. The current system regarding the execution of international letters rogatory and the relevant judicial remedies are as follows: If the requesting State is bound to Luxembourg by an international agreement, the reference texts applicable to the actual execution of letters rogatory addressed to the Grand Duchy of Luxembourg are article 3, paragraph 1, of the European Convention on Mutual Assistance in Criminal Matters and article 44 of the Benelux Treaty:

(a) In accordance with article 3, paragraph 1, of the European Convention on Mutual Assistance, "the requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.";

(b) Article 44 of the Benelux Treaty states that "except as provided for otherwise by this Treaty, the law of the requested Party is solely applicable ... to the execution of requests for mutual judicial assistance."

Settled judicial practice, based on the texts referred to above, assumes that, unless specified otherwise by a treaty provision, Luxembourg law is applicable in respect of the execution of requests for mutual judicial assistance, and also in respect of any appeal proceedings against the implementation of such requests. It follows that international letters rogatory are executed by the judicial authorities in Luxembourg, specifically by the investigating judge in accordance with the procedures applicable under Luxembourg law, which are mainly to be found in the Code of Pre-Trial Proceedings. The same applies to the judicial remedies which are admissible in the matter. In the absence of a specific text regulating these remedies, they are borrowed from articles 126 (invalidity) and 68 (restitution) of the Code of Pre-Trial Proceedings.

107. The judicial remedies applicable in respect of letters rogatory originating from a State not bound to Luxembourg by an international agreement are as follows:

(a) Remedy of annulment, based on article 126 of the Code of Pre-Trial Proceedings;

(b) Application for restitution of confiscated items, based on article 68 of the Code of Pre-Trial Proceedings.

Settled judicial practice imposes the same limitations on the remedy of annulment and the application for restitution as those described above in respect of requests originating from a State bound to Luxembourg by an international agreement.

E. Article 10

Training in public administration

108. Since its establishment in 1984, the Administrative Training Institute has organized courses entitled "Protection of the Citizen" for senior and middle-ranking civil servants. Among other things, these courses provide an introduction to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Training in the prison administration

109. Courses on torture awareness are organized for prison warders in the context of ongoing training efforts.

Training in the law-enforcement services

110. Before entering service (human rights course) and during their ongoing training (course focusing on torture), officers of the law-enforcement services are provided with a basic grounding in the subject.

F. Articles 12 and 13

Prison discipline

111. Internal security at prisons is the responsibility of prison staff. However, when prison staff alone are unable to restore and maintain order and security owing to the seriousness or scale of an incident which has occurred or is likely to occur inside a prison, the governor or a person acting on his behalf must request the assistance of the chief of the gendarmerie and immediately notify the Principal State Counsel of this request. The same measures must be taken in the event of an attack or threat from outside the prison.

112. The prison administration provides warders with weapons in circumstances and in accordance with procedures which it deems appropriate. Warders are not authorized to carry any weapon inside prison buildings, unless permitted to do so by the governor in circumstances which justify this measure and for a strictly defined purpose. Warders engaged in surveillance duties outside prison buildings may be armed in accordance with the provisions laid down in the service instructions. In any event, firearms may only be used in self-defence.

113. In accordance with the amended Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons, the governor (with the authority of the Principal State Counsel) is responsible for administering the institution of which he is the chief. He must see to it that the instructions relating to the maintenance of order and security at the institution under his control are rigorously applied.

114. Breaches of laws, regulations and instructions, and acts of disobedience, indiscipline and insubordination, are punishable according to

circumstances and the gravity of the offence. No detainee may be punished without being informed of the offence or fault of which he is accused and without being given the opportunity to present his defence. The governor or his appointed representative must undertake a comprehensive examination of the case.

Discipline in the law-enforcement services

115. In accordance with the Law-Enforcement Services Discipline Act of 16 April 1979, all commanding officers are obliged to set an example in their behaviour and the performance of their duties. They are responsible for supervising the duties and discipline of their subordinates.

116. Subordination means the dependence of the subordinate officer on his superior, to whom he owes respect and obedience. Exceptionally, in the absence of a superior officer, a member of the law-enforcement services may assume the right to give an order to other law-enforcement officers provided they are not superior to him in rank, for example to maintain discipline or security.

117. Disciplinary authority is bound to rank and cannot be delegated separately from it.

118. Disciplinary proceedings are a matter for the ranking competent military commander and the disciplinary board. The board may, either of its own accord or at the request of the accused, order additional investigations to be carried out with a view to establishing the facts. The board's hearings are not public.

119. Military punishments are imposed by courts martial by way of a substantiated decision after the accused military officer has pleaded his case. Such decisions may be appealed.

G. Article 15

120. The truth, which is the objective of a criminal trial, cannot be established by absolutely any means. It is a matter of principle that judges may not consider evidence obtained by wrongful or unfair means (Court decision of 26 June 1972 (Pasicrisie 22. 216)).

H. Article 16

Prisons

121. The organization of prisons is governed by the Act of 27 July 1997.

122. Two prisons are designed for the enforcement of custodial sentences imposed by punitive courts and the implementation of measures of detention prescribed by law. In Luxembourg prison, (a) only essential administrative relations exist between persons in the "male" and "female" sections of the institution; (b) in accordance with the Youth Protection Act of 10 August 1992, minors committed to the prison are held in solitary confinement; (c) minors are physically segregated from older prisoners and

attend an educational facility within the prison. Luxembourg prison is the only closed institution with the facilities to handle juvenile delinquents; (d) there are plans to build a new closed prison exclusively for minors at Dreiborn, away from Luxembourg prison.

The Givenich detention centre is an open prison with a semi-custodial regime.

Treatment of detainees

123. The treatment of detainees is governed by the Grand Ducal Regulation of 24 March 1989 (amended). This regulation deals with committal, release, escorted transfers to outside institutions, internal discipline, punishments, rewards, applications for remedies, contacts with the outside (correspondence, visits), maintenance (food, medical treatment), work, savings, and the opportunity to receive general or vocational training.

Annex*

LIST OF DOCUMENTS REFERRED TO

(1) Constitution of 17 October 1868 (amended)

(2) Extracts from the Criminal Code

(3) Extracts from the Code of Pre-Trial Proceedings

(4) Foreign Criminals Extradition Act (amended) of 13 March 1870

(5) Extracts from the Act of 28 March 1972 on:

1. The entry and residence of aliens;

2. Medical examinations for aliens;

3. The use of foreign labour

(6) Law-Enforcement Services Discipline Act of 16 April 1979

(7) Code of Military Procedure Revision Act of 31 December 1982

(8) Act of 26 July 1986 on certain modes of enforcement of custodial sentences

(9) Grand Ducal Regulations of 24 March 1989 and 18 March 1995 on the internal administration and regulations of prisons

(10) Youth Protection Act of 10 August 1992

(11) Sentencing Regimes Act of 13 June 1994

(12) Administrative Organization of the Courts Act of 7 November 1996

(13) Reorganization of the Prison Administration Act of 27 July 1997

(14) Organization of the Constitutional Court Act of 27 July 1997

(15) Bill on mutual judicial assistance in criminal matters

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* The annexes may be consulted in the archives of the Office of the High Commissioner for Human Rights once they have been received from the Government of Luxembourg.

(16) Bill on amending:

(a) Certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973;

(b) The Act of 17 March 1992:

1. Ratifying the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988;

2. Amending and updating the Sale of Medicinal Substances and Drug Addiction Control Act of 19 February 1973;

3. Amending and updating certain provisions of the Code of Pre-Trial Proceedings;

(c) The Insider Dealing Act of 3 May 1991; and

(d) The Act of 26 July 1986 on certain modes of enforcement of custodial sentences

(17) Bill on amending:

1. The adaptation of domestic law to the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Act of 31 July 1987;

2. The transposition of certain recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, amending certain provisions of the Criminal Code and the Code of Pre-Trial Proceedings;

3. The amendment of the Foreign Criminals Extradition Act (amended) of 13 March 1870

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NATIONS

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

AUSTRIA*

[6 October 1998]

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* The initial report submitted by the Government of Austria is contained in document CAT/C/5/Add.10; for its consideration by the Committee, see documents CAT/C/SR.18 and 19 and Official Records of the General Assembly, Forty-fourth session, Supplement No. 46 (A/44/46), paras. 202-230.

GE.98-05033 (E)

Introduction

1. Austria ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1987 (Federal Gazette No. 492/1987); the initial report was submitted in 1988 pursuant to article 19 of the Convention (CAT/C/5/Add.10).

2. The present report is a comprehensive account for the period from 1989 to August 1998 and is intended to serve as supplement to the initial report, focusing on the present legal situation, especially on those aspects which are substantively related to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While the Republic of Austria regrets the delay in reporting, it would like to point out that a number of legislative as well as practical changes in the national framework have now been completed, so that a comprehensive report can now be made.

3. International monitoring of the protection of human rights is given high priority in Austria. The Austrian authorities undertake continuous efforts to ensure the improvement of the standard of human rights protection and are particularly interested in carrying on a continuous dialogue with the human rights organs within the framework of the United Nations and the Council of Europe. In 1958, Austria ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 3 of which reads as follows: "No one shall be subjected to torture or the inhuman or degrading treatment or punishment."

4. The ECHR and the Protocols thereto play a decisive role in Austria and are of constitutional standing, directly enforceable and applicable before Austrian courts of law and authorities. The ECHR and its application by the Convention organs have had a strong influence on the legal system both in the legislative and executive fields, in particular as regards the law of criminal procedure, the jurisdiction of the administrative authorities in determining matters of civil law, and the administrative criminal procedure. The protection and implementation of human rights is basically observed by public authority. In those cases where individual human rights violations nevertheless occur, there is an effective system of legal protection. After all domestic remedies have been exhausted, i.e. after ordinary appeals have been taken to the highest instance in Austria and after adequate use has been made of the available extraordinary appeals, for example by filing a complaint with the Constitutional Court or the Administrative Court, a complainant may file an individual application with the European Commission on Human Rights invoking a violation of his/her rights guaranteed by the ECHR and may subsequently also address the European Court of Human Rights or - as of November 1998 - the permanent European Court of Human Rights in Strasbourg established in accordance with Protocol No. 11 to the ECHR.

5. Furthermore, in 1989, Austria ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Federal Gazette No.74/1979). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Austria twice, in 1990 and 1994 (see para. 49 of the present report).

6. In the past few years, the law pertaining to the Austrian security police authorities has undergone a process of renewal which has far-reaching consequences for the legal status of persons living in Austria. The starting point of this process was the Security Police Act (*Sicherheitspolizeigesetz*, Federal Gazette No. 566/1991) which entered into force on 1 May 1993. This Act, for the first time, placed the prevention-oriented activity of the police within a regulatory framework; it gives the individuals affected by a police action important subjective rights, on the one hand, and a wider scope of legal protection, on the other. At the same time, a "Code of Professional Duties" was introduced in a so-called Guideline Ordinance (*Richtlinienverordnung*/RLV, Federal Gazette No. 266/1993) which reaches beyond the sphere of competence of the security police and contains guidelines on the prohibition of discriminatory treatment of persons and the conduct of interrogations.

7. As a next step of the reform process, a fundamental revision of the provisions regulating detention on remand was implemented with the Criminal Procedure Modification Act 1993 (*Strafprozeßänderungsgesetz*, Federal Gazette No. 526). This is a first move in the direction of a comprehensive reform of preliminary criminal proceedings, which had already been due for some time.

8. As a third element of this complete reorganization of the powers of the security police, a comprehensive revision of the law pertaining to aliens was adopted in June 1997. The 1997 Aliens' Act (*Fremdengesetz*, Federal Gazette I No. 75/1998) and the 1997 Asylum Act (*Asylgesetz*, Federal Gazette I No. 76/1998) entered into force on 1 January 1998 while maintaining the general principle of the migration law which had been in force since the early 1990s. The main objective of this "integration package" was to maintain the basic principles of the legislation pertaining to migration which take into account the migratory movements in the wake of the opening of the Eastern borders, and which were characterized by the strict separation and specific treatment of individual groups of foreigners (tourists, migrant workers and asylum-seekers), on the one hand, and the prevention of the abuse of asylum rights, on the other hand; in addition the "integration package" aims at achieving greater justice in the enforcement of the law in individual cases.

9. Thus, a codification process has been undertaken which has revised large parts of the law in less than a decade and which should be completed in the upcoming legislative period by a revision of preliminary criminal proceedings (including police investigations).

I. THE SECURITY POLICE ACT (SICHERHERTSPOLIZEIGESETZ, SPG)

A. Principles of fulfilment of tasks and legal protection

10. The SPG presents a significant change regarding the way in which the activities of the police authorities and their enforcement officers are regulated, insofar as it clearly shows that a person affected by an intervention by the security police is to be regarded a legal subject, i.e. as a holder of subjective rights which can only be interfered with in specific cases and then only to the extent that this interference is commensurate with the importance of the duty to be fulfilled. A closely related aspect is that

the person affected by an official intervention is granted full legal protection, the competence for which is primarily vested in the Independent Administrative Tribunals (*Unabhängige Verwaltungssenate*).

11. An underlying objective of the SPG, which finds its expression in the above regulations, is to raise the awareness of security police officers with regard to the rights of persons affected by their actions. This is ultimately an important factor for the prevention of human rights violations.

1. Principles of fulfilment of tasks

12. As regards the fulfilment of tasks, the SPA lays down principles which

(a) Clearly indicate that the main objective of police intervention is not to serve the interests of the State but rather to protect the physical integrity of human beings;

(b) Are designed to guarantee that the rights of individuals affected by official acts committed by the security police are adequately safeguarded (principle of proportionality);

(c) Grant such persons certain minimum rights including the right to be informed at their request about the reason and purpose of the intervention and the right to submit facts that are relevant to the intervention, and to have these facts officially established;

(d) Give the officers of the public security service guidelines for their intervention which are intended to contribute to a reasonable interaction with the persons concerned and to reduce the risk of conflict.

2. The Guideline Ordinance (RLV)

13. The above-mentioned basic objective of ensuring an interaction with persons affected that respects them as holders of certain rights is expressed in the Guidelines for the Intervention of Organs of Public Security - issued in the form of an ordinance - as follows.

14. Section 5 of the RLV which is entitled "Respect for Human Dignity", provides for a comprehensive prohibition of discrimination which has special regard for the status of members of social fringe groups; in the fulfilment of their duties, the organs of public security are to refrain from any action which may create the impression of partiality or can be seen as discrimination on the ground of gender, race or skin colour, national or ethnic origin, religious affiliation, political beliefs or sexual orientation. The organs of public security are - with a few exceptions - obliged to address everybody respectfully by using the formal personal pronoun "*Sie*".

15. Anyone affected by a police action must at their request be informed about their rights and about the purpose of the police intervention (sect. 6, para. 1).

16. Persons being interrogated should, wherever possible, be permitted to sit down (sect. 6, para. 2).

17. Interrogations of arrested persons must generally be conducted on official premises (sect. 6, para. 3). In case of lengthy interrogations, breaks must be taken. Interrogations must be documented in such a way that it is possible later on to re-establish how they were conducted.

18. The organs of public security must inform arrested persons to be examined by a physician commissioned by the authority that they are free to ask for a doctor of their choice provided that this is possible without substantially delaying the examination (sect. 8, para. 3).

19. Persons affected by a police action may raise the issue of observance of the guidelines by lodging a complaint to a superior authority (*Aufsichtsbeschwerde*) which is laid down separately in section 89 of the Security Police Act. If the complainant is not satisfied with the reaction of the police authority, he or she may request a review by an Independent Administrative Tribunal.

20. It is also possible for the superior authority to use the complaint as an occasion to promote a dialogue between the complainant and the respondent officer. This procedure is intended to facilitate a settlement of the conflict which, on the one hand, gives the persons affected the feeling that their concern is taken seriously, and on the other hand, leaves room for the understanding that the escalation of a conflict is often not only the fault of one side. If the complainant is satisfied with the dialogue, the complaint may be dropped.

3. Right to lawful intervention and legal protection

21. A special feature of Austrian law is section 87 of the SPG, which grants anyone affected by an act of police intervention a subjective right that the intervention must be in accordance with the law. This is to be seen in connection with section 88, which offers persons affected by any type of interference with their rights the opportunity to submit a complaint to the Independent Administrative Tribunal. Such comprehensive legal protection against police intervention is unique in Austrian law as these instruments of legal protection normally are only provided in connection with certain acts of sovereign authority (*hoheitliches Handeln*).

B. Security Report

22. In accordance with section 93 of the SPG, the Federal Government is required to submit an annual Security Report to the Austrian Parliament. This report must also include statistics regarding the complaints raised against organs of public security under disciplinary and criminal law. The 1996 Security Report (pp. 217-218), thus contains detailed information on complaints lodged against members of the Federal Police and Federal Gendarmerie authorities. Further information is given (pp. 298 and 299) on cases in which police officers were accused of maltreatment and which were reported to the Public Prosecutor. In the year under review, there were 715 complaints and 8 convictions.

II. THE CODE OF CRIMINAL PROCEDURE MODIFICATION ACT 1993 AND THE BASIC RIGHTS COMPLAINT ACT

23. As an important phase of the comprehensive reform of preliminary criminal proceedings, the Code of Criminal Procedure Modification Act 1993 (*Strafprozeßänderungsgesetz* 1993), Federal Gazette No. 526/1993), constitutes a fundamental reorganization of the provisions concerning arrest and detention on remand.

24. The new provisions require a renewal of remand decisions within specified time limits (two weeks, one month, two months); the examining judge has to decide each time following a hearing with the defendant, the defence counsel and the prosecutor. Legal assistance is mandatory in such proceedings. A new scheme of legal aid has been set up for the purpose of providing instant legal assistance to all defendants arrested and remanded in provisional detention (*Untersuchungshaft*).

25. A defendant who is arrested at a place outside the jurisdiction of the court having issued the arrest warrant, is to be brought to this court from any part of the country within 72 hours after the arrest.

26. The new law has led to a significant (and permanent) reduction of the population in remand detention (by more than 20 per cent).

27. As far as detention is concerned, it is possible as from 1 January 1993 to have orders and decisions of criminal courts reviewed by the Supreme Court under a special Basic Rights Complaint Act (*Grundrechtsbeschwerdegesetz*, Federal Gazette No. 864/1992), to ascertain whether there has been a violation of the basic right to personal liberty, for instance by an incorrect assessment of the preconditions for detention on remand, its disproportionate length or, by an incorrect application of the law in connection with arrest or detention.

III. THE ALIENS' ACT 1997 AND THE ASYLUM ACT 1997

28. The current law pertaining to aliens and asylum matters contains some important provisions designed to counteract the risk of maltreatment.

A. Ban on expulsion and deportation

29. An explicit ban on expulsion and deportation (refoulement) within the meaning of article 33 (1) of the Convention relating to the Status of Refugees, (Federal Gazette No. 55/1955), which is in effect in Austria as an ordinary federal law in the version of the Protocol relating to the Status of Refugees (Federal Gazette No. 78/1968), has already been introduced in the Austrian law pertaining to aliens (sect. 13a of the Aliens' Police Act in the version of Federal Gazette No. 190/1990). This provision was included without any substantive changes in the 1997 Aliens' Act (sect. 57) and amended by a special procedural provision (sect. 75) which requires the authority to examine whether there is a reason to assume a risk of persecution that is relevant within the context of deportation.

30. Under the law, the expulsion or deportation of foreigners to another country is inadmissible if there are valid reasons to assume that this would put them at a risk of being subjected to inhuman treatment or punishment or to the death penalty in that country. The expulsion or deportation of foreigners to another country is not admissible if there are valid reasons to assume that their life or liberty would be at risk because of their race, religion, nationality, membership of a specific social group or their political opinions. This ban on residence-terminating measures is of an absolute nature and must be observed *ex officio* at all stages of proceedings aimed at terminating a person's right of residence. Pursuant to section 75, paragraph 1, of the Aliens' Act, the authority is obliged to decide, at a foreigner's request, whether there are valid reasons to assume that he or she is threatened in a State designated by him or her under section 57, paragraph 1 or 2, of the above Act. The only exception to that rule applies where an asylum authority has previously decided on the question of admissibility of deportation to another State or where it has found that the foreigner will be protected from persecution in a third country.

31. The Asylum Act 1997, which took effect together with the Aliens' Act on 1 January 1998, provides for a separate non-refoulement review by the asylum authorities. This is to ensure that a competent authority with expert knowledge decides on the admissibility of police measures in sensitive cases. Additionally, the asylum authorities are obliged to observe the "third country" clause, which, unlike the former law, is essentially future oriented and thus requires a prognosis with regard to the level of security to be expected in the third country. The reason is to avoid protection gaps which might result from an interpretation of the third-country rule based on the past situation.

32. Thus, it is clearly stipulated that, in the face of a threat of inhuman treatment or punishment or the death penalty, any measure terminating the right of residence would be inadmissible even in cases where article 33, paragraph 2, of the Convention relating to the Status of Refugees is applicable. For, under this provision, a residence-terminating measure would also be admissible under article 33, paragraph 1, of the Refugee Convention in case of a deportation ban if the refugee, for important reasons, constitutes a danger for the security of the Republic of Austria or poses a threat to the community because of a final conviction for a serious crime.

33. The provision concerning the restricted right of residence (sect. 15, Asylum Act) must be seen in connection with the non-refoulement review. Under that rule, the asylum authorities are obliged to grant those aliens whose application for asylum has been finally rejected for other than asylum exclusion reasons (art. 1.F of the Geneva Convention) and who are not legally entitled to stay on the Austrian federal territory a restricted residence permit if the non-refoulement review has shown that the rejection, expulsion or deportation of such aliens is not admissible. This is to ensure that foreigners who cannot be made to leave the country are granted a right to stay as long as the situation prevails. Thus, a restricted residence permit is usually granted in conjunction with a negative decision regarding asylum; it can, however, also be granted at a later stage when a residence permit has initially been granted and then ceased to apply.

34. Finally, a deportation under section 57, paragraph 6, of the Aliens' Act 1997 is not admissible as long as the European Commission on Human Rights or the European Court of Human Rights has indicated an interim measure, i.e. that an alien cannot be expelled until the Commission or the Court has examined the application.

B. Independent Federal Asylum Tribunal (Unabhängiger Bundesasylsenat)

35. The lawmakers have upgraded the status of asylum proceedings by establishing an independent appeal authority in asylum matters, the so-called Independent Federal Asylum Tribunal (sect. 38 of the Asylum Act 1997) whose members are appointed for an unrestricted term of office and who are not subject to superior orders. The court-like organization of the new authority, which - unlike the Federal Asylum Office, which is subordinate to the Federal Minister of the Interior - is established within the sphere of competence of the Federal Chancellor, thus constitutes a tribunal within the meaning of article 6 of the European Convention. It is thereby ensured that decisions in asylum proceedings, which are in substance closely related to universally recognized human rights and which frequently contribute significantly to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, are taken under optimal circumstances and with an adequate level of quality.

C. Protection of displaced persons

36. The Aliens' Act 1997 also provides a special contribution to the prevention of torture in that it protects "displaced persons" (sect. 29) even if they do not come within the scope of protection of the Geneva Refugee Convention. Under paragraph 1 of this provision, the Federal Government has the authority, with the consent of the Main Committee of the National Council (*Nationalrat*), to grant groups of aliens who are directly affected and who cannot find protection elsewhere a temporary right of residence during times of armed conflict or under other circumstances threatening the security and safety of entire ethnic groups. This system has already proved extremely helpful during the crisis in Bosnia and Herzegovina.

37. In order to ensure that a sufficient remedy is available in periods where an ordinance by the Federal Government cannot be issued with the consent of the Main Committee of the National Council because the extent and duration of the armed conflict in the region in crisis cannot sufficiently be assessed, or because the National Council cannot deal with the matter promptly enough, for instance, during the summer recess, it is possible, with the consent of the Federal Minister of the Interior, under section 10 paragraph 4, of the Aliens' Act, to grant displaced aliens a three-month residence permit ex officio on humanitarian grounds even if there were important reasons to refuse such a permit. The availability of the possibility for an adequate reaction during the earliest indication of a crisis is thus ensured.

IV. SELECTION AND TRAINING OF POLICE OFFICERS

38. The selection and training of police officers constitutes an important contribution towards the prevention of torture or inhuman treatment.

A. Selection of police officers

39. In January 1996, the Minnesota Multiphasic Personality Inventory Test (MMPI), which is used to examine the suitability of persons applying for employment or life tenure status, was introduced in Austria. The test is designed to detect reliably all latent psychological illnesses and all pathological personality disorders. In the case of unusual test results an expert in the field of psychiatry is consulted to ensure that all persons with major personality disorders are excluded from recruitment into the public security service.

B. Education in the course of basic vocational training

40. During their basic training police officers are instructed in the field of constitutional law with a view to providing them with an understanding of basic rights and to teaching them how to perform their duties with respect for human dignity. The training programme for senior supervisors includes a separate course entitled "Human Rights" which emphasizes the importance of these fundamental rights. Within the framework of further vocational and in-house training, there are frequent references to the importance of human rights and the relevant laws, especially the Security Police Act. In addition, sections 5 and 6 of the Guideline Ordinance contain important provisions concerning "respect for human rights" and "dealing with persons affected by a police action". Criminal investigation officers, who are primarily responsible for examining persons arrested, receive special training in interrogation techniques.

C. Human Rights Week

41. It is the conviction of the Federal Ministry of the Interior that lasting prevention of police interference cannot be achieved only by conducting more thorough reviews, but needs to be rooted in the police officers' understanding of their roles and duties. With the aim of launching a reflection process on the relationship between the basic rights of persons affected by police actions and the statutory duties of police officers, a special Human Rights Week was held from 2 to 6 February 1998, in the course of which key members of the police force from all parts of the Ministry were informed about the importance of human rights in everyday practice.

42. This project was initiated following charges by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning cases of mistreatment during police custody. The main target group of the project - for reasons of cost - comprised senior police officers such as heads of district gendarmerie departments or high-ranking security police staff and detectives at the Federal Police Directorates. It is gratifying to note that the workshop was organized in cooperation with Austrian NGOs such as Caritas and Amnesty International.

43. The main issues covered in the workshop included the conduct of police officers vis-à-vis criminals and suspects as well as human rights violations against foreigners, fringe groups and minorities. By presenting some examples

of their own, participants in the workshop were able to widen and deepen their understanding of sensitive human rights matters arising in the performance of their duties and to develop alternative ways of how to act.

44. While there was some initial scepticism on the part of the participants, the workshop was able to break down barriers of prejudice on both sides; this was largely due to the involvement of outside groups.

45. It was remarkable to note that the participants developed specific projects designed to communicate the issues and problems to their staff. An important contribution came from the Wolfsberg District Gendarmerie Department, which had realized an impressive project on the topic of "gendarmerie authorities responding to citizens' needs" which to a large extent also had to do with human rights. Remarkably, the project has led to a reduction in the number of complaints in the district by half. In the light of this positive experience, the other participants suggested that more such workshops or seminars be conducted, that the subject matter be integrated in the curriculum of further vocational training courses, that the scope of basic training be amended and enlarged and that panel discussions be organized with representatives of NGOs and citizens' groups.

46. Finally, it may be noted that the Human Rights Week workshop was not a one-time undertaking but rather the beginning of a project which should be continued in the future. This aim, however, can only be achieved if the further training of educators ("multipliers") is guaranteed, if all members of the security police force are included in the target group, and if certain ideas concerning the basic and further training of police officers are implemented.

V. EXAMINATIONS BY MEDICAL OFFICERS

47. The Federal Ministry has already instructed the gendarmerie and police authorities (by ministerial orders of 6 and 15 February 1990, respectively) to ensure that examinations by the competent medical officer may be conducted in police prison facilities without prior notice. The security authorities were specifically reminded of these ministerial orders in 1996, on the occasion of the visit of the CPT to Austria. The number of such examinations was set at a minimum of 12 per year.

48. Pursuant to section 5 of the Service Rules for Medical Officers in the Federal Police Authority, any injuries observed in the course of an examination by a medical officer are to be noted in the medical report, which must provide a detailed description of the injuries and of the type of traces or visible signs or consequences of physical harm that were observed, as well as information about the alleged physical harm incurred, its causes and consequences. When the new service rules for medical officers are issued, it will be important to re-emphasize the above provisions. There is a general obligation to examine any offence, including possible physical injuries, in accordance with the pertinent laws. This applies in particular to those officers of the public security service who are performing supervisory functions.

VI. THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

49. The CPT visited Austria twice, from 20 to 27 May 1990 and from 26 September to 7 October 1994. In both of its reports, the CPT criticized certain aspects of police arrests. In particular, the CPT pointed out on both occasions that people being arrested by the security authorities are at risk of being maltreated. Both the reports of the CPT and the comprehensive observations by the Austrian Federal Government have been published (cf. Council of Europe documents CPT/Inf (91) 11 of 3 October 1991 and CPT/Inf (96) 29 of 31 October 1996). (In a letter of 3 October 1996, the CPT expressed the wish that the Austrian observations on the CPT's report on its second visit to Austria be amended in some aspects. This request was complied with on 31 January 1997.)